

### Remarks

We are in receipt of the Office Action of May 20, 2008 and the foregoing Amendment and following remarks are made in light thereof.

Claims 1-7 are pending in the application. Pursuant to the Office Action, claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Yates et al. US 5,403,312. This rejection was made final.

Pursuant to the foregoing Amendments, claims 1 and 3, the only independent claims pending in the application, have been amended to require that portions of the jaws of the device are parallel "to each other," both in the clamped position and through a range of tissue clamping spacing. In addition, claims 1 and 3 have been amended to require that the tissue contacting portion of the electrodes be "substantially directly opposed to each other along at least part of their lengths." As set forth in detail below, Yates et al. neither discloses nor suggests a device with these features.

Specifically, Yates et al. discloses an electrosurgical device that mechanically cuts and staples tissue and provides for tissue welding or cauterization along a cutting path. The disclosed devices have end effectors with opposing interfacing surfaces associated with jaws for engaging tissue. Electrically opposite poles are located on one or both of the opposing surfaces. "Where the poles are on opposite interfacing surfaces, they are offset from each other so that they are not diametrically opposed from each other on interfacing surfaces." See Column 3, lines 54-57 (emphasis added). The positioning of the electrodes so that they are offset and not diametrically opposed is essential to the operation of the devices disclosed in Yates et al., as it ensures that

electrodes of opposite polarity are electrically isolated from each other, and will not contact each other during use and create a short circuit.

With reference to Figure 18, which is specifically referred to in the Office Action by the Examiner, there is seen a cross section of the embodiment shown in Figure 17. In Figure 17, spaced-apart electrodes 751,752 are offset (or staggered) from each other. (Column 9, lines 57-61). As visible in Figure 17, the electrodes are spaced apart such that electrodes 751 on one jaw are never directly (i.e., diametrically) opposed along their length to electrodes 752 on the other jaw. In Figure 18, spaced-apart electrodes 752 on an upper jaw are shown in dashed lines to represent their offset position with respect to spaced-apart electrodes 751 on a lower jaw. Thus, in contrast to the claimed invention, the electrodes in Figure 18 of Yates et al. are offset from each other and, as such, are not substantially directly or diametrically opposed along their length – and are intentionally made that way – therefore actually teaching against the claimed subject matter.

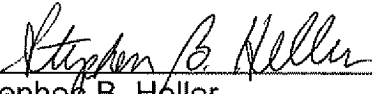
In the Office Action, the Examiner responded to the response filed on November 19, 2007 by indicating that the phrase “face-to-face” is interpreted to mean “being in the presence of another; facing,” and that, in light of this definition, the electrodes seen in Fig. 17 of Yates et al. can be understood as “being in the presence of the other and facing towards each other, albeit in an off-set position.” By the foregoing Amendment, which requires the tissue contacting surfaces of the electrodes to be substantially directly (i.e.,diametrically) opposed to each other along at least part of their lengths, the Examiner’s interpretation of “face-to-face” is no longer applicable.

In addition, the Examiner indicated that the language “at least portions of the

jaws being parallel through a range of tissue clamping spacing” is interpreted so that the “portions of each jaw” refers to “two points on the same jaw, which are therefore parallel to each other through a range a tissue clamping spacing.” By way of the foregoing amendments, it is made clear that it is portions of the first and second jaws which are substantially parallel “to each other,” both when in the clamped or closed position and through a range of clamping spacing. Accordingly, the Examiner’s interpretation of the portions of the jaws that are parallel as being two points on the same jaw also is no longer applicable.

In view of the foregoing, it is respectfully submitted that the claimed subject matter is not anticipated by Yates et al. and reconsideration and allowance of the claims is respectfully requested.

Respectfully submitted,

  
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